

SENATE BILL NO. 155

INTRODUCED BY M. HALLIGAN

BY REQUEST OF THE LOCAL GOVERNMENT FUNDING AND STRUCTURE COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ALL MUNICIPALITIES AND COUNTIES, BY A VOTE OF THE ELECTORATE, TO ADOPT A LOCAL OPTION SALES TAX; LIMITING THE GOODS AND SERVICES THAT MAY BE SUBJECT TO A LOCAL OPTION SALES TAX; PROVIDING FOR THE DISTRIBUTION OF LOCAL OPTION SALES TAX REVENUE; PROVIDING THAT LOCAL OPTION SALES TAX REVENUE MAY BE USED FOR ANY PURPOSE REFLECTED IN THE RESOLUTION AUTHORIZING THE LOCAL OPTION SALES TAX; PROHIBITING DOUBLE TAXATION; PROVIDING THAT AN EXISTING RESORT TAX IMPOSED BY A RESORT COMMUNITY, RESORT AREA, OR RESORT AREA DISTRICT REMAINS IN EFFECT AS A LOCAL OPTION SALES TAX; AMENDING SECTIONS 7-6-1501, 7-6-1502, 7-6-1503, 7-6-1504, 7-6-1505, 7-6-1506, 7-6-1508, 7-6-1509, 7-6-1531, 7-6-1542, 7-7-4424, 7-7-4428, AND 16-4-420, MCA; REPEALING SECTION 7-6-1507, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-6-1501, MCA, is amended to read:

"7-6-1501. Resort tax -- definitions. As used in 7-6-1501 through 7-6-1506, 7-6-1508, 7-6-1509, and [sections 13 through 15], the following definitions apply:

(1) (a) ~~"Luxuries"~~ "Luxury goods and services" means any gift item, luxury item, or other item or any service normally sold to the public ~~or~~ and to transient visitors or tourists, including but not limited to the following:

(i) lodging facilities and campgrounds as defined in 15-65-101;

(ii) meals prepared either for onsite consumption or to take out;

(iii) alcoholic beverages sold by the drink;

(iv) rentals of automobiles, boats, snowmobiles, off-road vehicles, and other vehicles used for travel or recreation;

(v) rentals of camping, hunting, fishing, or other recreational equipment;

(vi) ski lift tickets, hunting and fishing guide services, guided tours, trail rides, and other

1 recreational services and facilities;

2 (vii) admissions for movies, theatrical presentations, exhibits, and sporting events other than
3 school-related events or nonprofit events;

4 (viii) daily fees at golf courses that are not owned by a governmental entity;

5 (ix) admissions for water slides, amusement parks, or hot springs or other resorts; and

6 (x) souvenir items.

7 (b) The term does not include food purchased unprepared or unserved, medicine, medical supplies
8 and services, appliances, hardware supplies and tools, or any necessities of life.

9 (2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical
10 maintenance purposes, whether or not prescribed by a physician.

11 (3) "Medicine" means substances sold for curative or remedial properties, including both physician
12 prescribed and over-the-counter medications.

13 (4) "Resort area" means an area that:

14 (a) is an unincorporated area and is a defined contiguous geographic area;

15 (b) has a population of less than 2,500 according to the most recent federal census or federal
16 estimate;

17 (c) derives the major portion of its economic well-being from businesses catering to the
18 recreational and personal needs of persons traveling to or through the area for purposes not related to their
19 income production; and

20 (d) has been designated by the department of commerce as a resort area prior to its establishment
21 by the county commissioners as provided in 7-6-1508.

22 ~~(5) "Resort community" means a community that:~~

23 ~~—— (a) is an incorporated municipality;~~

24 ~~—— (b) has a population of less than 5,500 according to the most recent federal census or federal~~
25 ~~estimate;~~

26 ~~—— (c) derives the primary portion of its economic well-being related to current employment from~~
27 ~~businesses catering to the recreational and personal needs of persons traveling to or through the~~
28 ~~municipality for purposes not related to their income production; and~~

29 ~~—— (d) has been designated by the department of commerce as a resort community."~~

30

1 **Section 2.** Section 7-6-1502, MCA, is amended to read:

2 **"7-6-1502. ~~Resort community~~ Local option taxing authority -- specific delegation.** As required by
3 7-1-112, 7-6-1501 through ~~7-6-1507~~ 7-6-1506, and ~~[sections 13 through 15]~~, specifically delegate to
4 the electors of each respective ~~resort community~~ municipality or county the power to authorize their
5 municipality or county to impose a ~~resort~~ local option sales tax within the county or within the corporate
6 boundary of the municipality ~~as provided in 7-6-1501 through 7-6-1507.~~"

7
8 **Section 3.** Section 7-6-1503, MCA, is amended to read:

9 **"7-6-1503. Limit on ~~resort~~ local option sales tax rate -- luxury goods and services subject to tax.**

10 (1) The rate of the ~~resort~~ local option sales tax must be established by the election petition or resolution
11 provided for in 7-6-1504, but the rate may not exceed ~~3%~~ 4%.

12 (2) (a) The ~~resort~~ local option sales tax is a tax on the retail value of all luxury goods and services
13 sold as provided in the petition or resolution, except for goods and services sold for resale, within the
14 ~~resort community~~ municipality or area county ~~by the following establishments:~~

15 ~~—— (i) hotels, motels, and other lodging or camping facilities;~~

16 ~~—— (ii) restaurants, fast food stores, and other food service establishments;~~

17 ~~—— (iii) taverns, bars, night clubs, lounges, and other public establishments that serve beer, wine,~~
18 ~~liquor, or other alcoholic beverages by the drink; and~~

19 ~~—— (iv) destination ski resorts and other destination recreational facilities.~~

20 (b) Establishments that sell ~~luxuries~~ luxury goods or services, or both, shall collect a the sales tax
21 on ~~such luxuries~~ luxury goods and services subject to the tax."

22
23 **Section 4.** Section 7-6-1504, MCA, is amended to read:

24 **"7-6-1504. ~~Resort~~ Local option sales tax -- election required -- procedure -- notice.** (1) A ~~resort~~
25 ~~community~~ municipality or area county may not impose or, except as provided in 7-6-1505, amend or
26 repeal a ~~resort~~ local option sales tax unless the ~~resort~~ local option sales tax question has been submitted
27 to the electorate of the ~~resort community~~ municipality or area county and approved by a majority of the
28 electors voting on the question.

29 (2) The ~~resort~~ local option sales tax question may be presented to the electors of:

30 (a) a ~~resort community~~ municipality by a petition of the electors, as provided by 7-1-4130,

1 ~~7-5-132, and 7-5-134~~ 7-5-131 through 7-5-137, or by a resolution of the governing body of the ~~resort~~
 2 ~~community municipality~~; or

3 (b) a ~~resort area~~ county by a resolution of the board of county commissioners, ~~following receipt~~
 4 ~~of or by~~ a petition of electors as provided in ~~7-6-1508~~ 7-1-4130 and 7-5-131 through 7-5-137.

5 ~~(3) If a resort area is in more than one county, the resort tax question must be presented to and~~
 6 ~~approved by the electors in the resort area of each county.~~

7 ~~(4)~~(3) The petition or resolution referring the taxing question must state:

8 (a) the luxury goods and services subject to the local option sales tax;

9 ~~(a)~~(b) the rate of the ~~resort~~ local option sales tax;

10 ~~(b)~~(c) the duration of the ~~resort~~ local option sales tax;

11 ~~(c)~~(d) the date when the tax becomes effective, which ~~date~~ may not be earlier than 35 days after
 12 the election; and

13 ~~(d)~~(e) the purposes that may be funded by the ~~resort~~ local option sales tax revenue.

14 ~~(5)~~(4) Upon receipt of an adequate petition, the governing body may:

15 (a) call a special election on the ~~resort~~ local option sales tax question; or

16 (b) have the ~~resort~~ local option sales tax question placed on the ballot at the next regularly
 17 scheduled election.

18 ~~(6)~~(5) (a) Before the ~~resort~~ local option sales tax question is submitted to the electorate of a ~~resort~~
 19 ~~community municipality or area county~~, the governing body of the ~~resort community municipality~~ or the
 20 board of county commissioners in the county ~~in which the resort area is located, as applicable,~~ shall
 21 publish notice of the goods and services subject to the ~~resort~~ local option sales tax; in a newspaper that
 22 meets the qualifications of subsection ~~(6)(b)~~ (5)(b). The notice must be published twice, with at least 6
 23 days separating publications. The first publication must be no more than 30 days prior to the election and
 24 the last no less than 3 days prior to the election.

25 (b) The newspaper must be:

26 (i) of general, paid circulation with a second-class mailing permit;

27 (ii) published at least once a week; and

28 (iii) published in the county where the election will take place.

29 ~~(7)~~(6) The question of the imposition of a ~~resort~~ local option sales tax may not be placed before
 30 the electors more than once in any fiscal year."

1

2 **Section 5.** Section 7-6-1505, MCA, is amended to read:

3 **"7-6-1505. ~~Resort~~ Local option sales tax administration.** (1) In this section, "governing body"

4 means:

5 (a) the governing body of a ~~resort community~~ municipality;

6 (b) if the ~~resort~~ local option sales tax has been approved by the electors of a ~~resort area~~ county,
7 the board of county commissioners; or

8 (c) if the electors of the resort area establish a resort area district, the district board of directors.

9 (2) Not less than 30 days prior to the date that the ~~resort~~ local option sales tax becomes effective,
10 the governing body shall enact an administrative ordinance governing the collection and reporting of the
11 ~~resort taxes~~ local option sales tax. This administrative ordinance may be amended at any time ~~as may be~~
12 ~~necessary~~ to effectively administer the ~~resort~~ local option sales tax.

13 (3) The administrative ordinance must specify:

14 (a) the times that taxes collected by businesses are to be remitted to the governing body;

15 (b) the office, officer, or employee of the governing body responsible for receiving and accounting
16 for the ~~resort~~ local option sales tax receipts;

17 (c) the office, officer, or employee of the governing body responsible for enforcing the collection
18 of ~~resort taxes~~ the local option sales tax and the methods and procedures to be used in enforcing the
19 collection of ~~resort~~ local option sales taxes due; and

20 (d) the penalties for failure to report local option sales taxes due, failure to remit taxes due, and
21 violations of the administrative ordinance. The penalties may include:

22 (i) criminal penalties not to exceed a fine of \$1,000 or 6 months' imprisonment, or both;

23 (ii) civil penalties if the governing body prevails in a suit for the collection of ~~resort~~ local option
24 sales taxes, not to exceed 50% of the ~~resort~~ taxes found due plus the costs and attorney fees incurred
25 by the governing body in the action;

26 (iii) revocation of a county or municipal business license held by the offender; and

27 (iv) any other penalties that may be applicable for violation of an ordinance.

28 (4) The administrative ordinance may include:

29 (a) further clarification and specificity in the categories of luxury goods and services that are
30 subject to the ~~resort~~ local option sales tax consistent with 7-6-1503;

(b) authorization for business administration and prepayment discounts. The discount authorization may allow each vendor and commercial establishment to:

(i) withhold up to 5% of the ~~resort taxes~~ local option sales tax collected to defray ~~their~~ its costs for the administration of the tax collection; or

(ii) receive a refund of up to 5% of the ~~resort~~ local option sales tax payment ~~received from them~~ by paid to the governing body 10 days prior to the collection due date established by the administrative ordinance.

(c) other administrative details necessary for the efficient and effective administration of the tax."

Section 6. Section 7-6-1506, MCA, is amended to read:

"7-6-1506. Use of ~~resort community~~ local option sales tax revenues -- bond issue -- pledge. (1)

Unless otherwise restricted by the voter-approved tax authorization provided for in 7-6-1504, a ~~resort community~~ municipality or county may appropriate and expend revenues derived from a ~~resort~~ local option sales tax for any activity, undertaking, or administrative service that the municipality or county is authorized by law to perform, including costs resulting from the imposition of the tax.

(2) A ~~resort community~~ municipality or county may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102. Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the municipality or county ~~as that~~ the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

(3) A ~~resort community~~ municipality or county may pledge for repayment of bonds issued under this section the ~~revenues~~ revenue derived from a ~~resort~~ local option sales tax, special assessments levied for and revenues collected from the facilities, improvements, or undertakings for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the ~~resort community~~ municipality or county. ~~Such~~ The bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the bonds, the municipality or county determines that the ~~resort~~ local option sales tax ~~revenues~~ revenue, special assessments levied for and ~~revenues~~ revenue from ~~such the~~ facilities, improvements, or undertakings, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal ~~thereof~~ and interest ~~thereon~~ of the bonds when due. Bonds may not be issued pledging

proceeds of the ~~resort~~ local option sales tax for repayment unless the municipality or county in the resolution authorizing issuance of the bonds determines that in any fiscal year the annual ~~revenues~~ revenue expected to be derived from the ~~resort~~ local option sales tax, ~~less the amount required to reduce property taxes pursuant to 7-6-1507,~~ equals at least not less than 125% of the average amount of the principal and interest payable from the ~~resort~~ local option sales tax ~~revenues~~ revenue on the bonds and any other outstanding bonds payable from the ~~resort~~ local option sales tax except any bonds to be refunded upon the issuance of the proposed bonds."

Section 7. Section 7-6-1508, MCA, is amended to read:

"7-6-1508. Establishment of a resort area -- taxing authority -- approval by electorate. (1) The establishment of a resort area for the purpose of imposing a ~~resort~~ local option sales tax may be initiated by a written petition to the board of county commissioners of the county in which the area is located. The petition must contain a description of the proposed resort area and must be signed by at least 15% of the electors residing in the proposed area.

(2) The petition must include a proposal to impose a ~~resort~~ local option sales tax within the proposed resort area, including the rate, duration, effective date, and purpose of the tax as provided in 7-6-1504.

(3) Upon receiving a petition to establish a resort area, the board of county commissioners shall present the question to the electors residing in the proposed resort area as provided in 7-6-1504."

Section 8. Section 7-6-1509, MCA, is amended to read:

"7-6-1509. Use of resort area local option sales tax. (1) (a) Except as provided in subsection (1)(b) or unless otherwise provided by the resolution approved by the electors under 7-6-1504, the board of county commissioners shall appropriate and spend revenue derived from a resort area local option sales tax for the purpose stated in the resolution.

(b) If the electors of a resort area have established a resort area district, the district board of directors shall appropriate and spend revenue derived from a resort area local option sales tax for the purpose stated in the resolution.

(2) If the electors of a resort area have not established a resort area district, the resort area shall reimburse the board of county commissioners for costs associated with the collection, administration, and

1 litigation of the resort area local option sales tax."

2

3 **Section 9.** Section 7-6-1531, MCA, is amended to read:

4 **"7-6-1531. Resort area district -- definitions.** For the purposes of 7-6-1531 through 7-6-1550,
5 unless the context requires otherwise, the following definitions apply:

6 (1) "Board" means the board of directors of the resort area district.

7 (2) "Resort area" means a resort area created under 7-6-1508 that:

8 (a) is an unincorporated area and a defined geographic area;

9 (b) has a population of less than 2,500 according to the most recent federal census or federal
10 estimate;

11 (c) derives the major portion of its economic well-being from businesses catering to the
12 recreational and personal needs of persons traveling to or through the area for purposes not related to the
13 persons' income production; and

14 (d) has been designated by the department of commerce as a resort area prior to its establishment
15 by the board of county commissioners as provided in 7-6-1508.

16 (3) "Resort area district" means a district created under 7-6-1531 through 7-6-1550 that has been
17 established as a resort area under 7-6-1508."

18

19 **Section 10.** Section 7-6-1542, MCA, is amended to read:

20 **"7-6-1542. Resort area district board powers related to administration and expenditure of resort**
21 **tax revenue.** The board of a resort area district created under 7-6-1531 through 7-6-1550 may:

22 (1) appropriate and expend revenue from a resort area local option sales tax for any activity,
23 undertaking, or administrative service authorized in the resolution creating a resort area and adopting a
24 resort area local option sales tax; and

25 (2) adopt administrative ordinances necessary to aid in the collection or reporting of resort area
26 local option sales taxes and in the expenditure of resort area local option sales tax revenue."

27

28 **Section 11.** Section 7-7-4424, MCA, is amended to read:

29 **"7-7-4424. Undertakings to be self-supporting.** (1) The governing body of a municipality issuing
30 bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services,

1 facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time
2 whenever necessary so that the undertaking is and remains self-supporting. The property taxes specifically
3 authorized to be levied for the general purpose served by an undertaking or ~~resort~~ local option sales taxes
4 approved, levied, and appropriated to an undertaking in compliance with 7-6-1501 through 7-6-1506,
5 7-6-1508, and 7-6-1509 constitute revenue of the undertaking and may not result in an undertaking being
6 considered not self-supporting.

7 (2) The rates, fees, or charges prescribed, along with any appropriated property tax or ~~resort~~ local
8 option sales tax collections, must produce revenue at least sufficient to:

9 (a) pay when due all bonds and interest on the bonds, the payment of which the revenue has been
10 pledged, charged, or otherwise encumbered, including reserves for the bonds; and

11 (b) provide for all expenses of operation and maintenance of the undertaking, including reserves."
12

13 **Section 12.** Section 7-7-4428, MCA, is amended to read:

14 **"7-7-4428. Covenants in resolution authorizing issuance of bonds.** Any resolution or resolutions
15 authorizing the issuance of bonds under this part may contain covenants as to:

16 (1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the
17 disposition of the proceeds;

18 (2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued,
19 including the creation and maintenance of reserves and including the pledge or appropriation of all or a
20 portion of the property and ~~resort~~ local option sales tax revenue referred to in 7-7-4424;

21 (3) the transfer, from the general fund of the municipality to the account or accounts of the
22 undertaking, of an amount equal to the cost of furnishing the municipality or any of its departments,
23 boards, or agencies with the services, facilities, or commodities of the undertaking;

24 (4) the issuance of other or additional bonds payable from the revenue of the undertaking;

25 (5) the operation and maintenance of the undertaking;

26 (6) the insurance to be carried on the undertaking and the use and disposition of insurance money;

27 (7) books of account and the inspection and audit of the books; and

28 (8) the terms and conditions upon which the holders or trustees of the bonds or any proportion
29 of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The
30 receiver may:

- 1 (a) enter and take possession of the undertaking;
2 (b) operate and maintain the undertaking;
3 (c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and
4 (d) collect, receive, and apply all revenue thereafter arising from the undertaking in the same
5 manner as the municipality itself might do."

6
7 **NEW SECTION. Section 13. Distribution of local option sales tax proceeds.** (1) A local option
8 sales tax imposed by the county must be levied countywide. Subject to subsection (2), revenue from a
9 municipal local option sales tax is retained by the municipality. Subject to subsection (2), and unless
10 otherwise provided by agreement with municipalities, the county shall distribute county local option sales
11 tax revenue in the following manner:

12 (a) 50% of the amount collected in the county must be distributed based on population by
13 calculating the ratio of the population of each municipality in the county to the population of the county
14 as derived from the most recent estimates by the U.S. bureau of the census or, if estimates are not
15 available, derived from the most recent federal decennial census; and

16 (b) the remaining 50% of the amount collected in the county is distributed based on the point of
17 origin of the tax revenue.

18 (2) (a) If the entity levying a local option sales tax is Billings, Bozeman, Butte, Great Falls, Helena,
19 Kalispell, Missoula, or the county in which one of the enumerated municipalities is located, then 25% of
20 the local option sales tax revenue must be transferred to the department of revenue for redistribution.
21 Subject to subsection (2)(b), the department shall distribute revenue received under this subsection (2)(a)
22 to each county, city, and town based upon the ratio of the population of the local government to the
23 population of the state derived from the most recent estimates by the U.S. bureau of the census or, if
24 estimates are not available, derived from the most recent federal decennial census.

25 (b) A city or county enumerated in subsection (2)(a) is not entitled to a share in the revenue
26 distribution under subsection (2)(a). The department of revenue shall exclude the population of that
27 jurisdiction from the statewide population for the purposes of calculating the ratio for eligible counties,
28 cities, and towns. The department of revenue may adopt rules to implement this section.

29 (3) For purposes of revenue distribution under this section, a resort area or resort area district
30 must be treated in the same manner as a municipality.

1

2 **NEW SECTION.** **Section 14. Double taxation prohibited.** (1) A local option sales tax, in excess
3 of a combined total of 4%, may not be levied on the same person or transaction by more than one local
4 government, including a resort area or resort area district.

5 (2) If the electorate of a county approves a local option sales tax after the electorate of a
6 municipality, resort area, or resort area district in the county has approved a local option sales tax on the
7 same person or transaction at the same or a higher rate than the tax imposed by the county, persons or
8 transactions in the municipality, resort area, or resort area district are subject to the county tax and the
9 local option sales tax imposed by the municipality, resort area, or resort area district is considered reduced
10 to the difference between 4% and the rate of the county local option sales tax. If the local option sales
11 tax imposed by the municipality, resort area, or resort area district is at a lower rate than the tax imposed
12 by the county, the governing body of the municipality or the board of directors of the resort area district,
13 as applicable, shall repeal the tax without a vote of the electorate.

14 (3) A municipality, resort area, or resort area district may not enact a local option sales tax if a
15 4% local option sales tax is in effect in the county within which the municipality, resort area, or resort area
16 district lies.

17

18 **NEW SECTION.** **Section 15. Resort tax -- grandfather provision -- reestablishment.** (1) A resort
19 tax that was enacted in a resort community, resort area, or resort area district prior to [the effective date
20 of this act] remains in effect in the manner adopted by the resort community, resort area, or resort area
21 district under 7-6-1501 through 7-6-1550, as those sections read prior to [the effective date of this act].
22 The resort tax remains in effect on the items and for the duration approved by the electorate under
23 7-6-1504. Subject to [section 14], prior to its expiration and if approved by the electorate, a resort tax
24 may be reestablished for a specific duration.

25 (2) A resort community, resort area, or resort area district established prior to [the effective date
26 of this act] remains separate from any county adopting a local option sales tax unless the electorate of the
27 resort community, resort area, or resort area district agrees to abandon the resort tax and adopt a local
28 option sales tax. All proceeds of a resort tax must be distributed to the resort community, resort area,
29 or resort area district in which it was collected. Any local option sales tax imposed by a county may not
30 be imposed in the resort community, resort area, or resort area district. The proceeds of a county local

1 option sales tax may not be distributed to the resort community, resort area, or resort area district.

2

3 **Section 16.** Section 16-4-420, MCA, is amended to read:

4 **"16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer
5 and wine license to an applicant whenever the department determines that the applicant, in addition to
6 satisfying the requirements of this section, meets the following qualifications and conditions:

7 (a) in the case of an individual applicant:

8 (i) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
9 business person and citizen demonstrate that the applicant is likely to operate the establishment in
10 compliance with all applicable laws of the state and local governments; and

11 (ii) the applicant is not under 19 years of age;

12 (b) in the case of a corporate applicant:

13 (i) in the case of a corporation listed on a national stock exchange, the corporate officers and the
14 board of directors shall meet the requirements of subsection (1)(a);

15 (ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or
16 more of the outstanding stock shall meet the requirements for an individual listed in subsection (1)(a); and

17 (iii) the corporation is authorized to do business in Montana;

18 (c) in the case of any other business entity, including but not limited to partnerships, including
19 limited liability partnerships, limited partnerships, and limited liability companies, but not including any form
20 of a trust:

21 (i) if the applicant consists of more than one individual, all individuals shall meet the requirements
22 of subsection (1)(a); and

23 (ii) if the applicant consists of more than one corporation, all corporations listed on a national stock
24 exchange shall meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock
25 exchange shall meet the requirements of subsection (1)(b)(ii);

26 (d) the applicant operates a restaurant at the location where the restaurant beer and wine license
27 will be used or satisfies the department:

28 (i) that the applicant intends to open a restaurant that will meet the requirements of subsection
29 (6) and intends to operate the restaurant so that at least 65% of the restaurant's gross income during its
30 first year of operation is expected to be the result of the sale of food;

(ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be stated on the food bill; and

(iii) that the restaurant will serve beer and wine from a service bar, as service bar is defined by the department by rule;

(e) the applicant understands and acknowledges in writing on the application that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect; and

(f) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current seating capacity if the restaurant is operating.

(2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

(b) A restaurant that sells its existing retail license may not apply for a license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

(3) (a) A completed application for a license under this section and the appropriate application fee, as provided in subsection (11), must be submitted to the department. The department shall request that the department of justice make an investigation of all the items relating to the application as described in subsections (3)(a)(i) through (3)(a)(iv). Based on the results of the investigation or in exercising its sound discretion, the department shall determine whether:

(i) the applicant is qualified to receive a license;

(ii) the applicant's premises are suitable for the carrying on of the business;

(iii) the requirements of this code and the rules promulgated by the department are met and complied with; and

(iv) the seating capacity as stated on the application is correct.

(b) The department may retain 20% of the application fee collected under subsection (11) to defray the costs of the department and department of justice associated with investigating and processing applications.

(4) An application for a beer and wine license submitted under this section is subject to the

1 provisions of 16-4-203, 16-4-207, and 16-4-405.

2 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then
3 the department may issue a conditional license prior to completion of the premises based on reasonable
4 evidence, including a statement from the applicant's architect or contractor confirming that the seating
5 capacity stated on the application is correct, that the premises will be suitable for the carrying on of
6 business as a bona fide restaurant, as defined in subsection (6).

7 (6) For purposes of this section, "restaurant" means a public eating place where individually priced
8 meals are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross
9 income from the operation must be from the sale of food and not from the sale of alcoholic beverages.
10 Each year after a license is issued, the applicant shall file with the department a statement, in a form
11 approved by the department, attesting that at least 65% of the gross income of the restaurant during the
12 prior year resulted from the sale of food. The restaurant must have a dining room, a kitchen, and the
13 number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to
14 satisfy the department that the space is intended for use as a full-service restaurant. A full-service
15 restaurant is a restaurant that provides an evening dinner meal.

16 (7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may
17 be transferred, upon approval by the department, from the original applicant to a new owner of the
18 restaurant if there is no change of location, and the original owner may transfer location after the license
19 is issued by the department to a new location, upon approval by the department.

20 (ii) A new owner may not transfer the license to a new location for a period of 1 year following
21 the transfer of the license to the new owner.

22 (b) A license issued under this section may be jointly owned, and the license may pass to the
23 surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to
24 any other person or entity by operation of the laws of inheritance or succession or any other laws allowing
25 the transfer of property upon the death of the owner in this state or in another state.

26 (c) An estate may, upon the sale of a restaurant that is property of the estate and with the
27 approval of the department, transfer a restaurant beer and wine license to a new owner.

28 (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

29 (i) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the
30 quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued

1 in that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that
2 quota area pursuant to 16-4-105;

3 (ii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the
4 quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued
5 in that quota area is equal to or less than 50% of the number of beer licenses that may be issued in that
6 quota area pursuant to 16-4-105;

7 (iii) for a restaurant located in a quota area with a population of 60,001 persons or more, as the
8 quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued
9 in that quota area is equal to or less than 40% of the number of beer licenses that may be issued in that
10 quota area pursuant to 16-4-105; and

11 (iv) for a restaurant located in a quota area that is also a resort community, as the resort
12 community is designated by the department of commerce ~~under 7-6-1501(5)~~, if the number of restaurant
13 beer and wine licenses issued in the quota area that is also a resort community is equal to or less than
14 100% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

15 (b) In determining the number of restaurant beer and wine licenses that may be issued under this
16 subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(iii), the
17 department shall round to the nearer whole number.

18 (c) If the department has issued the number of restaurant beer and wine licenses authorized for
19 a quota area under subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one
20 additional license for that quota area.

21 (d) If there are more applicants than licenses available in a quota area, then the license must be
22 awarded by lottery as provided in subsection (9).

23 (9) (a) When a restaurant beer and wine license becomes available by the initial issuance of
24 licenses under this section or as the result of an increase in the population in the quota area, the
25 nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the
26 department, then the department shall advertise the availability of the license in the quota area for which
27 it is available. If there are more applicants than number of licenses available, the license must be awarded
28 to an applicant by a lottery.

29 (b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at
30 least 12 months prior to the filing of an application must be given a preference, and any unsuccessful

1 lottery applicants from previous selections must also be given a preference. An applicant with both
2 preferences must be awarded a license before any applicant with only one preference.

3 (c) The department shall numerically rank all applicants in the lottery. Only the successful
4 applicants will be required to submit a completed application and a one-time required fee. An applicant's
5 ranking may not be sold or transferred to another person or entity. The preference and an applicant's
6 ranking apply only to the intended license advertised by the department or to the number of licenses
7 determined under subsection (8) when there are more applicants than licenses available. The applicant's
8 qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the
9 time of the lottery.

10 (10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
11 consumption.

12 (11) An application for a restaurant beer and wine license must be accompanied by a fee equal to
13 20% of the initial licensing fee. If the department does not make a decision either granting or denying the
14 license within 4 months of receipt of a complete application, the department shall pay interest on the
15 application fee at the rate set in 16-1-409(4) until a license is issued or the application is denied. Interest
16 may not accrue during any period that the processing of an application is delayed by reason of a protest
17 filed pursuant to 16-4-203 or 16-4-207. If the department denies issuing a license to an applicant, the
18 application fee, plus any interest, less a \$100 processing fee, must be refunded to the applicant. Upon the
19 issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial
20 licensing fee is determined according to the following schedule:

- 21 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;
22 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or
23 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

24 (12) The annual fee for a restaurant beer and wine license is \$400.

25 (13) If a restaurant licensed under this part increases the stated seating capacity of the licensed
26 restaurant or if the department determines that a licensee has increased the stated seating capacity of the
27 licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at
28 the time of filing the original application and issuance of a license and the applicable fees for the additional
29 seating.

30 (14) The number of beer and wine licenses issued to restaurants with a stated seating capacity

1 of 101 persons or more may not exceed 25% of the total licenses issued.

2 (15) Possession of a restaurant beer and wine license is not a qualification for licensure of any
3 gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant
4 with a restaurant beer and wine license."

5

6 NEW SECTION. **Section 17. Repealer.** Section 7-6-1507, MCA, is repealed.

7

8 NEW SECTION. **Section 18. Codification instruction.** [Sections 13 through 15] are intended to
9 be codified as an integral part of Title 7, chapter 6, part 15, and the provisions of Title 7, chapter 6, part
10 15, apply to [sections 13 through 15].

11

12 NEW SECTION. **Section 19. Saving clause.** [This act] does not affect rights and duties that
13 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this
14 act].

15

16 NEW SECTION. **Section 20. Effective date.** [This act] is effective on passage and approval.

17

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